

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC ANTHONY NEPUTE,
individually, and as
Owner of Quickwork LLC; and

QUICKWORK LLC,
a limited liability company,
also d/b/a WELLNESS WARRIOR,

Defendants.

Case No.: 4:21-cv-00437

**UNITED STATES' REPLY
MEMORANDUM IN SUPPORT OF
ITS MOTION TO COMPEL
DEFENDANT NEPUTE TO
PRODUCE EVIDENCE ON ABILITY
TO PAY A CIVIL PENALTY**

Defendant Eric Anthony Nepute does not seriously contest that his ability to pay a civil penalty is relevant to this action and discoverable under Federal Rule of Civil Procedure 26(b). Nor could he. Rule 26(b) authorizes Plaintiff the United States of America to “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense[.]” And the Federal Trade Commission Act (“FTC Act”) requires the Court to consider Nepute’s ability or inability to pay when setting a civil penalty. *See* 15 U.S.C. § 45(m)(1)(C). Under similar enforcement schemes, courts have concluded that “financial information is clearly relevant” to the party’s claims and defenses and is therefore discoverable. *Baykeeper v. Kramer Metals, Inc.*, No. 2:07-CV-3849, 2009 WL 10671577, at *3-*4 (C.D. Cal. Feb. 27, 2009); *see, e.g., United States v. Bayley*, No. 3:20-CV-5867, 2022 WL 1014993, at *6 (W.D. Wash. Apr. 5, 2022).¹

¹ Like the Clean Water Act (at issue in *Baykeeper* and *Bayley*), the FTC Act requires the Court to consider a violator’s ability to pay when setting a civil penalty. *Compare* 15 U.S.C. § 45(m)(1)(C) (“In determining the amount of such a civil penalty, the court shall take into account the . . . ability to pay”) *with* 33 U.S.C. § 1319(d) (“In determining the amount of a civil penalty the

Rather than contesting relevance generally, Nepute instead asserts that Plaintiff's request for financial information is "premature" and "overbroad." Nepute mischaracterizes authority on the former point and contravenes authority on the latter. The government is not seeking discovery into whether Nepute can pay a judgment. *See Sierrapine v. Refiner Prod. Mfg., Inc.*, 275 F.R.D. 604, 609 (E.D. Cal. 2011) (recognizing that courts "generally do not allow pre-judgment discovery regarding a defendant's . . . ability to satisfy a judgment" because "such discovery is not relevant to the parties' claims or defenses"). Rather, Nepute's ability to pay is discoverable as part of Plaintiff's claims under the FTC Act, which makes clear that the ability to pay is relevant to "the determination of a penalty itself." *Bayley*, 2022 WL 1014993, at *6; *cf. Sierrapine*, 275 F.R.D. at 610 (holding that pre-judgment discovery into ability to pay was impermissible where it was not "addressed to any of the actual claims and defenses raised in the pleadings").²

As to breadth, Nepute misinterprets the FTC Act by asserting that "income generated outside of Quickwork is irrelevant" to the civil penalty. Nepute is named as an individual defendant. As such, the statute instructs the court to consider his ability to pay more generally—not just the benefits derived from his violations—when imposing a penalty. *See, e.g., United States v. Danube Carpet Mills, Inc.*, 737 F.2d 988, 994-95 (11th Cir. 1984) (considering "net worth,"

court shall consider . . . the economic impact of the penalty on the violator"). Outside civil enforcement, courts also allow discovery into financial information where it is relevant to a claim or defense, such as when a claimant seeks punitive damages. *See Baykeeper*, 2009 WL 10671577, at *3-*4 (citing, among others, *Hollins v. Powell*, 773 F.2d 191, 198 (8th Cir. 1985)).

² The Court should reject Nepute's passing suggestion to set a separate disclosure schedule for information on his ability to pay a civil penalty. As the court is aware, the parties will mediate on June 16, 2022, in an effort to resolve this case. ECF No. 68. Because "financial information is valuable in assisting both sides in making a realistic appraisal of the case, and may lead to settlement and avoid protracted litigation," *Baykeeper*, 2009 WL 10671577, at *4 (quoting *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 286 (C.D. Cal. 1998)), a lack of discovery into Nepute's ability to pay will seriously hamper this effort.

including assets, a part of the ability to pay analysis); *United States Dep't of Just. v. Daniel Chapter One*, 89 F. Supp. 3d 132, 153 (D.D.C. 2015) (same), *aff'd*, 650 F. App'x 20 (D.C. Cir. 2016). This includes household financial information sufficient to identify Nepute's assets, liabilities, income, expenses and asset transfers. *See United States v. Com. Recovery Sys., Inc.*, No. 4:15-CV-36, 2017 WL 1065137, at *3 (E.D. Tex. Mar. 21, 2017).

For these reasons—and for the reasons provided in Plaintiff's Memorandum in Support of its Motion to Compel, ECF No. 60—Plaintiff respectfully requests that the Court order Nepute to respond to Plaintiff's First Set of Interrogatories, numbers 1-3, and produce documents responsive to Plaintiff's First Set of Requests for the Production of Documents, numbers 2-6.

Dated: May 23, 2022

Respectfully submitted,

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